

REMARKS

By this paper, Applicant has amended Claims 1-4, 10, 17, 24, 26, 27, 29-31, and 37. Claims 18, 28, and 41-47 have been canceled. Claims 48-55 have been added. Hence, Claims 1-17, 19-27, 29-40, and 48-55 are presented for further examination.

I. Rejection of Claims under 35 § U.S.C. 102(e)

In paragraph 6 of the Office Action dated September 26, 2007, the Examiner rejected Claims 1-47 under U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,114,150 to Dimpsey, et al. (the '150 patent). Applicant respectfully submits that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. See M.P.E.P. § 2131. For the reasons set forth below, Applicant respectfully submits that the '150 patent fails to anticipate or otherwise render unpatentable the pending claims.

While, as discussed in the "PRE-APPEAL BRIEF REQUEST FOR REVIEW" filed on January 23, 2008, Applicant maintains that the claims as previously pending were patentable in view of the '150 patent, Applicant has filed the present amendment in conjunction with an RCE in order to expedite prosecution by further defining some of the patentable features recited in the claims as previously pending.

For example, Applicant has amended Claim 1 to recite a method comprising "identifying at least one construct in a program, wherein the program comprises native instructions for execution on a first processor having a first machine instruction set, assigning at least one native instruction of the program proximate the construct to be a trigger to invoke analysis code; [and] interpreting, via an interpreter, the program on a second processor having a second machine instruction set." Applicant submits that the '150 patent, including the portions of the '150 patent cited by the Examiner with respect to Claim 1, relate at most to identifying a construct in a program: "a specified location in a routine," col. 8 lines 33-45; "the hot spot... is identified," col. 2 lines 58-51; Fig. 11 (Office Action Page 3). Upon identification of a hot spot in native code, a hook that "transfers control to a handler" is inserted. '150 Patent, para. [0098]. Such a hook is disclosed to include a replacement or insertion of native code that causes "a break or interrupt." '150 Patent, para. [0098].

In contrast, Claim 1, as amended, recites “assigning at least one native instruction of the program proximate the construct to be a trigger to invoke analysis code” and “during the interpretation and upon interpreting the assigned native instruction, identifying the assigned native instruction as the trigger; and invoking the analysis code by the interpreter at the identified construct in response to identifying the trigger.” Thus, rather than the program having a trigger that natively transfers control to a handler, as disclosed in the ‘150 patent, in the method recited by Claim 1, a native instruction of the program is assigned to be a trigger and, upon interpreting and identifying the native instruction as a trigger, analysis code is invoked “in response to identifying the trigger.”

In one embodiment, the native instruction assigned as the trigger may be a native no-op instruction, which may be inserted into the program and which, when the program is natively executed, executes without substantially affecting the performance of the program. (See, for example, Claims 19-20 and 48-55. In contrast, the hooks of the ‘150 patent *would* affect the native code when run on the native processor because they would jump out of the program to instrumentation code that may not be present on the native platform.) However, Applicant notes that in one embodiment, the native instruction assigned as a trigger might be, for example, a break or interrupt instruction. However, such a trigger would be a part of the program such that it would transfer control of the instruction to another portion of the program and not to an instrumentation handler as disclosed by the ‘150 patent. That is, Claim 1 recites a method comprising “during the interpretation and upon interpreting the assigned native instruction, identifying the assigned native instruction as the trigger and invoking the analysis code by the interpreter at the identified construct in response to identifying the trigger” and not merely by having the break or interrupt instruction execute natively to jump or break to “transfer control to a handler” as disclosed by the ‘150 patent. Hence, Applicant submits that nowhere does the ‘150 patent disclose such “assigning” and “upon interpreting the assigned native instruction, identifying the assigned native instruction as the trigger” as recited in Claim 1, as amended.

Accordingly, Applicant submits that Claim 1 is patentable over the ‘150 patent. Further, Applicant submits that independent Claims 10, 24, 31, and 37 recite at least some of the patentable features discussed above with reference to Claim 1. (However, Applicant notes that each of independent Claims 10, 24, 31, and 37 vary in scope and should thus be considered

individually.) Applicant submits that the '150 patent also fails to teach or render obvious the claimed invention as recited in Claims 10, 24, 31, and 37 and that those claims are patentable for at least similar reasons to those discussed above with reference to Claim 1. Further, as each of Claims 2-9, 11-17, 19-23, 25-27, 29-30, 32-36, 38-40, and 48-52 depend from one of Claims 1-17, 19-27, 29-40, and 48-52, Applicant submits that those claims are patentable for at least the same reasons.

II. No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

III. Conclusion

Applicant has endeavored to address all of the Examiner's concerns as expressed in the outstanding Office Action. In light of the above amendments and remarks, reconsideration and withdrawal of the outstanding rejections is respectfully requested. If the Examiner has any questions which may be answered by telephone, he is invited to call the undersigned directly.

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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